

MEMO ENDORSED



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February 2, 2010

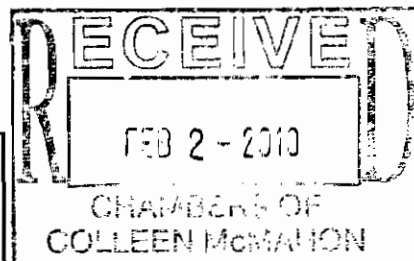
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Honorable Colleen McMahon
United States District Judge
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

*There will be
no delay
see my
letter*

**Re: Moises Mendez v. Starwood Hotels & Resorts Worldwide, Inc.,
No. 08 Civ. 4967 (CM)(KNF)**

Colleen McMahon
2/3/10

Dear Judge McMahon:

We represent Plaintiff Moises Mendez ("Mr. Mendez") in the above-referenced matter, and respectfully write in opposition to the letter by Defendant Starwood Hotels & Resorts Worldwide, Inc. ("Starwood"), dated January 27, 2010, requesting a further adjournment of the trial that is currently scheduled to commence on February 16, 2010 (*see* ECF #97).

As Your Honor may recall, Defendant has consistently grasped at all possible opportunities for delaying the progression of this case, which was originally scheduled for trial to commence on March 9, 2009 (*see* ECF #30).¹ Although discovery in this case was completed more than one year ago, on January 9, 2009 (*see* ECF #40), Defendant is now requesting that the Court delay the trial yet again, this time on the grounds of a purported scheduling conflict with regard to one of Defendant's witnesses, Dr. Andrew P. Levin, Starwood's paid testifying expert who conducted an independent psychiatric examination of Mr. Mendez for approximately four and one-quarter hours on December 12, 2008.

¹ We have consistently opposed each of Defendant's attempts to delay trial of this case, including Defendant's motions to dismiss (*see* ECF #18, 21 and 23), to stay discovery (*see* ECF #29), and to adjourn the trial (*see* ECF #54), as well as Defendant's interlocutory appeal (*see* ECF #50) and motion for a stay of trial by the Second Circuit (*see* ECF #45).

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Defendant's request to once again postpone Mr. Mendez's day in court based on the alleged travel plans of a witness retained by Defendant for the sole purpose of providing paid testimony at trial is unreasonable and would result in unfair prejudice to Mr. Mendez, his co-workers, and doctors who have been subpoenaed to testify as part of his case-in-chief and have arranged their schedules accordingly. Indeed, a number of the witnesses identified by Plaintiff during the final pretrial conference on October 16, 2009 have been subjected to apparent acts of intimidation and/or retaliation by Defendant over the past 14 weeks, including disparate acts of workplace discipline against employees who, in some cases, were *never* subject to any form of discipline during their more than five-year careers with Defendant.

Furthermore, to the extent that Dr. Levin's presence is genuinely required at an "out of town" location from February 22 to March 3, there is no reason why Defendant cannot have him return to New York for a few hours to testify following the completion of Mr. Mendez's case-in-chief, or simply forego his testimony altogether if Defendant is unwilling to bear this responsibility.

Accordingly, we respectfully request that Defendant's latest attempt to delay the trial again be rejected in its entirety, and that Mr. Mendez be permitted to begin presenting his case before a jury on February 16, 2010 as scheduled, and without Dr. Levin being allowed to be called before Mr. Mendez completes his case-in-chief.

Thank you for Your Honor's consideration.

Respectfully submitted,



Kenneth P. Thompson

cc: Scott B. Gilly, Esq.
Ari Graff, Esq.
Michael Starr, Esq.
Loren L. Forrest, Jr., Esq.